

COUNSEL FOR SUN HONG FOODS, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SUN HONG FOODS, INC.,
Plaintiff,

VS.

UTOPIA FOODS, INC. and
DOES 1-50, each individually,

Defendants.

Case No.:

Jury Trial Requested

COMPLAINT

1. Conversion
2. Viol. of Lanham Act – Misbranding
3. Viol. of Lanham Act – Trademark
4. Viol. of Lanham Act – Trade Dress
5. Viol. of P.A.C.A -Unfair Conduct
6. Viol of CA B & P §17500
7. Viol. of CA B & P §17200
8. Trade Libel
9. Negligence
10. Int. Interf. Prospective Econ. Advantage
11. Negl. Interf. Prospective Econ. Advantage
12. Injunctive Relief

1 **COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

2 For its Complaint for damages, restitution, civil penalty, and injunctive relief,
3 the plaintiff respectfully states as follows:
4

5 **THE PARTIES**

6 1. Sun Hong Foods, Inc. (*“Plaintiff”* or *“Sun Hong”*), is a California
7 corporation with its principal place of business located at 1105 W Olympic Blvd,
8 Montebello, CA 90640.
9

10 2. Sun Hong trades in fresh fruit and vegetable commodities the United
11 States Department of Agriculture (*“USDA”*) expressly recognizes as commodities
12 covered under the provisions of the Perishable Agricultural Commodities Act, 1930,
13 *as amended*, 7 U.S.C. §§ 499a-499t (2021) (*“PACA”*).
14
15

16 3. Sun Hong buys and sells wholesale quantities of perishable agricultural
17 commodities (hereinafter *“Produce”*) in both interstate and foreign commerce.
18

19 4. At all times relevant hereto Sun Hong operated its business under a valid
20 USDA issued PACA License, which the USDA has identified as License number
21 20160693.
22

23 5. As a PACA licensee, Sun Hong operated as a “dealer” of Produce as
24 defined by PACA.

25 6. Sun Hong, currently and throughout all of 2022, purchases or sources
26 Enoki Mushrooms from the Republic of Korea and sells the same in the United
27 States.
28

1 7. Sun Hong does not buy or sell Enoki mushrooms from China, and has
2 not done so since November of 2021.

3
4 8. Sun Hong has neither sold nor distributed Chinese Enoki mushrooms in
5 the United States since December of 2021.

6 9. Defendant, Utopia Foods, Inc., d/b/a Utopia Produce (hereafter
7 “Utopia” or “Defendant”), is a New York corporation with a principal place of
8 business located at 83-18 72nd Dr, Glendale, NY 11385. Utopia
9

- 10 a. sold or distributed, directly or indirectly, Produce (i.e., Enoki
11 mushrooms) in California, Missouri, Maryland, and other states;
12
13 b. committed certain statutory violations and tortious acts, as set forth
14 herein, within the State of California; and,
15
16 c. sold and distributed misbranded Produce falsely identifying Sun Hong
17 as the distributor of Produce Utopia sold and distributed to its customers
18 within, *inter alia*, the State of California and in the ordinary course of
19 its Produce business.
20

21 10. Utopia buys and sells wholesale quantities of Produce in both interstate
22 and foreign commerce.
23

24 11. At all relevant times hereto, Utopia traded in fresh fruit and vegetable
25 commodities, which the USDA expressly recognizes as commodities covered under
26 the provisions of PACA
27
28

1 12. At all times relevant hereto, Utopia operated its business under a USDA
2 issued PACA License, which the USDA has identified as License number 20221083.

3
4 13. As a PACA licensee, Utopia operated as a “dealer” of Produce as
5 defined by PACA.

6 14. At all times herein mentioned, each of the Defendants, including Does
7 One through Fifty, was the agent, servant, and employee of the other defendants, and
8 was acting at all times within the scope of his/her agency and with the knowledge
9 and consent of each other. Doe defendants includes all persons, entities, companies,
10 joint ventures, or any entity of any type, who acted to propagate, increase, sell, or
11 otherwise cause distribution of the wrongfully packaged enoki mushrooms into
12 commerce.
13

14
15 15. Utopia and all Does [hereinafter defined as “Defendants”], and each of
16 them, at all times herein mentioned, acted jointly and in concert and conspired and
17 agreed to do the things hereinafter specified; and each and all of the things hereinafter
18 alleged to have been done by the defendants or any of them, were done as co-
19 conspirators and thus, as agents for each other, as well as in their respective individual
20 capacities to advance their own individual interests.
21
22

23
24 16. If and when appropriate, Plaintiff will amend this Complaint or seek
25 leave of Court to amend this complaint for the purpose of pleading the names and
26 capacity of presently unknown Doe Defendants.
27
28

JURISDICTION AND VENUE

17. The District Court has subject matter jurisdiction over this civil action arising under 28 U.S.C. § 1331, Federal Question Jurisdiction, because this matter involves questions concerning the interpretation and application of multiple federal statutes.

18. First, the District Court has subject matter jurisdiction over this civil action arising pursuant to the Federal Food, Drug, and Cosmetic Act (“*FDCA*”) (21 U.S.C. § 301, *et seq.*), which prohibits and makes illegal the actions taken by Defendant Utopia as described herein.

19. Second, the District Court has subject matter jurisdiction over this civil action arising under PACA, 7 U.S.C. § 499e(b)(2) (“liability may be enforced by ... suit in any court of competent jurisdiction....”).

20. Third, the District Court has subject matter jurisdiction over this civil action arising under 15 U.S.C. § 1125(a) and (the “*Lanham Act*”)(prohibiting any act which “[i]s likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person,” 15 U.S.C. § 1125(a)(1)(A)).

21. The District Court also has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1337 because the FDCA, PACA, and Lanham Act

1 each qualify as an “Act of Congress regulating commerce” and Plaintiff’s claims
2 herein arise under 21 U.S.C. § 301, 7 U.S.C. § 499, and 15 U.S.C. § 1125.
3

4 22. The Court has supplemental jurisdiction over Plaintiff’s other claims
5 pursuant to 28 U.S.C. § 1367(a).
6

7 23. The Court has *in rem* jurisdiction over the Plaintiff’s claims pursuant to,
8 *inter alia*, 28 U.S.C. § 1655.

9 24. Venue in this district is based on 28 U.S.C. § 1391(b) because:
10

- 11 a. the case concerns the health and safety of all California citizens,
12 including those residing in the Central District;
13
14 b. a substantial part of the events or omissions giving rise to Plaintiff’s
15 claims occurred in this district and a substantial part of the property that
16 is the subject of this action is or was situated within this district;
17
18 c. Sun Hong is located in and operates its business in the Central District
19 of California, and;
20
21 d. Utopia has illegally sold misbranded/mislabeled food products bearing
22 Sun Hong’s packaging and Sun Hong’s Trade Dress, Trade Name,
23 Branding, Labeling, and Packaging in this district.

24 **NATURE OF THE CASE**

25 25. This civil action concerns *inter alia* violations by Defendant Utopia of
26
27
28

the FDCA, 21 U.S.C. § 301 *et seq.*,¹ PACA, 7 U.S.C. 499(b)(4) & (5)², the Lanham Act, 15 U.S.C. § 1125, *et. seq.*³, California's Unfair Trade Practices Act, Cal. Bus. & Prof. Code §§ 17200, 17500, *et. seq.*,⁴ and California's Sherman Law, Cal. Health & Saf. Code, § 110100, *et. seq.* (the "*Sherman Law*")⁵

26. Defendant Utopia has violated and continues to violate these statutes and continues to commit other tortious acts by introducing into the stream of

¹ The Federal Food, Drug, and Cosmetic Act (FDCA) (21 U.S.C. § 301 *et seq.*) prohibits the misbranding of any food (21 U.S.C. § 331(b)). A food is deemed misbranded under the FDCA if its labeling is false or misleading in any particular (21 U.S.C. § 343(a)).

² PACA prohibits the misbranding of perishable agricultural commodities (7 U.S.C.S. § 499b(5)) and unfair trade practices by PACA registered entities (7 U.S.C.S. § 499b(4)).

³ Lanham Act 15 U.S.C. § 1125(a)&(b) prohibits the use of "any word, term, name, symbol, or device, or any combination thereof," and "false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person", or "in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities" Lanham Act 15 U.S.C. §1127 prohibits adoption of a trade dress confusingly similar to a competitor's.

⁴ California's Business and Professional Code §17200 prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising" and "Plaintiffs may assert their Sherman Law violation under Business & Professions Code § 17200. *Jackson v. Balanced Health Prods.*, No. C 08-05584 CW, 2009 U.S. Dist. LEXIS 48848, at *17 (N.D. Cal. June 10, 2009).

⁵ The Sherman Food, Drug, and Cosmetic Law (the "*Sherman Law*") prohibits misbranding of Produce, misuse of another's trade name, misuse of another's packaging and labeling, and counterfeiting of another's packaging and trade name. Cal. Health & Saf. Code, §§ 110100, 110290, 110300, 110320, and 110330. The Sherman law states that "[a]ny food is misbranded if its labeling is false or misleading in any particular."

1 commerce and selling Enoki mushrooms from China illegally packaged in Plaintiff
2 Sun Hong's packaging.

3
4 27. Utopia's Enoki are misbranded and sold in packaging that is
5 counterfeited, stolen, improperly acquired, and/or used without the permission or
6 consent of Sun Hong.

7
8 28. Utopia has infringed and continues to infringe upon Sun Hong's
9 unregistered trademark and trade dress, as well as to engage in unfair business
10 practices, as defined under the Lanham Act, PACA, and California's Business and
11 Professional Code.

12
13 29. Utopia's illegal actions have caused, and will continue to cause,
14 consumer confusion as well as harm to Sun Hong's business operations, reputation,
15 and goodwill.

16
17 30. Making matters both worse and more urgent, both the state of
18 Missouri's Department of Health and the state of Maryland's Department of Health,
19 as confirmed by the U.S. Food & Drug Administration (the "*FDA*") and tracked by
20 the Center for Disease Control and Prevention (the "*CDC*"), have recently
21 determined the presence of the deadly bacteria *Listeria monocytogenes* ("*Listeria*")
22 in Utopia's Enoki mushrooms imported from China.

23
24
25 31. *Listeria* is a foodborne illness that may be lethal or especially harmful
26 if you are pregnant, aged 65 or older, or have a weakened immune system.

27
28 32. On December 13, 2022, the FDA published a public notice regarding

1 Utopia's voluntary recall of certain of its Chinese Enoki packaged in "a 200g, clear
2 and blue plastic package with brand name 'Utopia' and barcode 8928918610017
3 marked on the packaging."
4

5 33. Utopia voluntarily recalled certain of its Chinese Enoki Mushrooms,
6 which Utopia shipped nationwide, in December of 2022 because of the potential to
7 be contaminated with *Listeria monocytogenes*.
8

9 34. On December 17, 2022, the FDA issued an advisory alert that the "FDA
10 Advises Restaurants and Retailers Not to Serve or Sell and Consumers Not to Eat
11 Product Labeled as Sun Hong Foods, Inc. Enoki Mushrooms Sourced from China
12 Due to Possible *Listeria* Contamination."
13

14 35. On January 13, 2023, the FDA published a public notice regarding the
15 expansion of Utopia's voluntary recall of certain of its Enoki Mushrooms, imported
16 from China, with clear and blue plastic packages.
17

18 36. Utopia expanded its voluntarily recall of its Chinese Enoki Mushrooms,
19 which Utopia distributed in New York, New Jersey, and Connecticut to produce
20 wholesale companies for further distribution, in January of 2023 because of the
21 potential to be contaminated with *Listeria monocytogenes*.
22

23 37. FDA and certain state health departments collected and tested samples
24 of Utopia's enoki mushrooms and reported positive test results for *Listeria*
25 *monocytogenes*.
26

27 38. On January 27, 2023, the FDA published a public notice advising
28

1 restaurants and retailers not to serve or sell and consumers not to eat product labeled
2 as Sun Hong Foods, Inc. enoki mushrooms sourced from China due to possible
3 Listeria contamination.
4

5 39. For the safety and health of California citizens, and to protect Sun
6 Hong's business operations, reputation, and goodwill, Sun Hong asks this Honorable
7 Court to permanently enjoin Utopia from selling or distributing Produce in Sun
8 Hong's packaging.
9

10 **FACTUAL AVERMENTS**

11
12 40. Sun Hong has been an importer and distributor of Enoki mushrooms for
13 almost ten years, and it distributes Enoki nationwide.
14

15 41. Sun Hong is distributor of Enoki, and is well-known amongst
16 wholesalers and retailers with Asian-centric customer bases.
17

18 ***Sun Hong's Dealings with Chinese Enoki***

19 42. Prior to November of 2021, Sun Hong purchased and distributed Enoki
20 mushrooms from Shandong Youhe Biotechnology Co. Ltd. ("*Shandong*") in China.
21

22 43. In November 2021, Sun Hong ended its relationship with Shandong
23 following Sun Hong's voluntary recall of Shandong supplied Enoki mushrooms on
24 or about May 28, 2021 due to the potential for the product to be contaminated with
25 Listeria monocytogenes.
26

27 44. Sun Hong elected to end its relationship with Shandong to protect its
28

1 reputation and to ensure the safety of the products it sells to its customers.

2 45. Prior to the termination of its commercial relationship with Shandong,
3 Sun Hong had provided Shandong with plastic bags in 200-gram and 150-gram sizes,
4 labeled with Sun Hong's name and brand, indicating the contents of Enoki
5 mushrooms and their source and nutritional value. These bags also clearly indicate
6 that the Enoki mushrooms are a product of China. Shandong used these bags to pack
7 Enoki mushrooms for Sun Hong.
8

9 46. In November of 2021, when Sun Hong terminated its relationship with
10 Shandong, Shandong had hundreds of thousands of Sun Hong branded bags, which
11 Sun Hong paid for, had been printed in China, and were being used by Shandong to
12 pack Enoki mushrooms for Sun Hong.
13

14 47. Sun Hong estimates that Shandong possessed over 600,000 unused Sun
15 Hong branded enoki bags at the time Sun Hong terminated its relationship with
16 Shandong.
17

18 48. Following Sun Hong's termination of its relationship with Shandong,
19 Sun Hong specifically instructed Shandong to destroy the Sun Hong branded Enoki
20 mushroom bags, and not put them into the stream of commerce.
21

22 49. Sun Hong is informed and believes that Shandong is selling and/or
23 exporting to Utopia Foods, and that Utopia Foods is receiving and/or importing Enoki
24 mushrooms from Shandong, packaged in Sun Hong branded Enoki mushroom bags.
25

26 50. At all times relevant hereto, Utopia was, and may still be, distributing
27
28

1 Enoki mushrooms from China packaged in Sun Hong branded and labeled packaging
2 nationwide and without Sun Hong's knowledge or consent.
3

4 ***Sun Hong's Dealings with Korean Enoki***

5 51. Beginning in December of 2021, Sun Hong has only imported Enoki
6 mushrooms from the Republic of Korea, not from China.
7

8 52. Since January of 2022, Sun Hong has only purchased and sold Enoki
9 mushrooms grown in the Republic of Korea, which are all clearly marked or
10 identified as a product of Korea distributed by Sun Hong.
11

12 53. Since early August of 2022, Sun Hong has only sold Enoki mushrooms
13 which have been tested and are traceable to FDA approved laboratory tests,
14 indicating the absence of Listeria and other bacteria. Sun Hong has tested with FDA
15 approved laboratory tests in order to insure to protect its reputation, and to insure
16 listeria free sale and distribution of Enoki mushrooms from Korea on a shipment-by-
17 shipment basis.
18
19

20 ***Sun Hong's Discovery of Misbranded/Mislabeled Enoki in California***

21 54. In September of 2022, Sun Hong discovered that Sun Hong branded
22 packages of Enoki mushrooms were for sale at SF Supermarket Inc. stores, located
23 in both West Covina and Sacramento, California.
24

25 55. SF Supermarket Inc. is not a customer of Sun Hong and did not purchase
26 or receive Enoki mushrooms from Sun Hong.
27

28 56. SF Supermarket Inc. carried and was selling Sun Hong branded bags of

1 Enoki mushrooms labeled as “product of China.”

2 57. Sun Hong immediately recognized that the packaging on the shelves at
3 SF Supermarket Inc. was the packaging retained by Shandong.
4

5 58. On September 6, 2022, Sun Hong contacted the FDA and notified them
6 of the alleged misbranding/mislabeling incident it discovered in California and
7 provided pictures and information regarding the same.⁶
8

9 ***Utopia’s Distribution of Chinese Enoki***

10 59. Based upon recently published FDA and CDC notices, Sun Hong is
11 informed and believes that Utopia is presently selling and distributing, and continues
12 to sell and distribute, Enoki from China that is wrongfully labeled, misbranded, and
13 contains the deadly bacteria *Listeria monocytogenes*.
14
15

16 60. The FDA and various state agencies have confirmed the presence of
17 *Listeria* in Enoki mushrooms distributed and sold nationwide by Utopia and other
18 Produce wholesalers.
19

20 61. Currently, Sun Hong has no commercial relationship with Utopia, and
21 has never had any commercial or other direct trade or financial relationship with
22

23 ⁶ 21 U.S.C.S. § 331, expressly prohibits (a) the introduction or delivery for
24 introduction into interstate commerce of any food, drug, device or cosmetic that is
25 adulterated or misbranded; (b) the adulteration or misbranding of any food, drug,
26 device or cosmetic in interstate commerce; (c) the receipt in interstate commerce of
27 any food, drug, device or cosmetic that is adulterated or misbranded and the delivery,
28 or proffered delivery, thereof for pay or otherwise; (d) the introduction, or delivery
for introduction, into interstate commerce of any article in violation of § 344 or 355
of this title.

1 Utopia.

2 62. Sun Hong has never permitted or authorized Utopia to use its packaging,
3 its brand name, its identifying marks, or its label.
4

5 63. Utopia has never asked Sun Hong for permission to use any of Sun
6 Hong's packaging, its brand name, its identifying marks, or its label.
7

8 ***Utopia's Distribution of Contaminated Enoki in Missouri***

9 64. On December 13, 2022, Missouri's Department of Health and Senior
10 Services' Bureau of Environmental Health Services ("MDH") performed a Listeria
11 test on Enoki mushrooms being sold at Hong Kong Market, which is located in
12 Columbia, MO 65201, and the sampled product tested positive for Listeria.
13

14 65. The photographs and Listeria analysis from the Missouri Department of
15 Health demonstrate that the Hong Kong Market was selling Enoki mushrooms from
16 China packaged in both Utopia and Sun Hong branded packaging.
17

18 66. The Sun Hong branded Enoki mushroom packaging found in the Hong
19 Kong Market in Columbus, MO was identical to the packaging Sun Hong located in
20 California in September of 2022. Specifically, both instances involved Sun Hong's
21 packaging that was retained by Shandong and wrongly distributed in California and
22 throughout the country. Sun Hong is informed and believes that the wrongful
23 distribution of the Chinese Enoki mushrooms in the Sun Hong packaging is due to
24 the actions of Utopia.
25
26
27

28 67. Sun Hong does not sell, and has not sold, Chinese Enoki to the Hong

1 Kong Market in Columbus, MO. Sun Hong has not sold any Enoki mushrooms from
2 China for more than a year.

3
4 68. Because MDH found Chinese Enoki packaged in Sun Hong
5 branded/labeled bags for sale in the Hong Kong Market in Columbus, MO, On
6 December 17, 2022, the FDA issued a health advisory alert regarding enoki
7 mushrooms sourced from China and packaged in bags identifying Sun Hong as the
8 distributor.

9
10 69. The FDA notified Sun Hong that it intends to issue further warnings and
11 request recalls of the contaminated Enoki mushrooms from China.

12
13 70. In December of 2022, the FDA contacted Sun Hong asking Sun Hong
14 to issue a similar “Company Notice” to the one that Utopia issued recalling all of Sun
15 Hong’s Chinese Enoki.

16
17 71. Sun Hong communicated to the FDA that it could not recall any Chinese
18 Enoki because Sun Hong does not sell or distribute Chinese Enoki, and has not for
19 more than a year.

20
21 72. In its communication with the FDA, Sun Hong reminded the FDA
22 representatives of its September email notice/complaint regarding its discovery that
23 Utopia Foods appeared to be selling Chinese Enoki mushrooms in California illegally
24 packaged in Sun Hong packaging.

25
26 73. On December 17, 2022, the FDA issued an “Alerts, Advisory and Safety
27 Information” which stated in part:
28

1 On November 28, 2022, Missouri state partners, as a part of the
2 FDA-funded Laboratory Flexible Funding Model Cooperative
3 Agreement Program collected enoki mushroom samples from
4 retail markets in Missouri. One sample labeled as Sun Hong
5 Foods Inc, (Montebello, CA) and sourced from China tested
6 positive for *Listeria monocytogenes*, but does not appear to
7 match any clinical isolates from active outbreaks.

8 FDA Actions - The FDA is issuing this alert advising consumers
9 to not eat and restaurants and food retailers to not sell Sun Hong
10 Foods Inc. enoki mushrooms sourced from China due to
11 possible *Listeria monocytogenes* contamination. FDA is also
12 advising consumers, restaurants and food retailers to dispose of
13 Sun Hong Foods Inc. enoki mushrooms sourced from China.

14 The FDA is awaiting information on further interstate
15 distribution of the enoki mushrooms and will continue to
16 monitor the investigation and provide assistance to state
17 authorities as needed.

18 *Utopia's Distribution of Contaminated Enoki in Maryland*

19 74. On January 25, 2023, the Maryland Department of Health issued a
20 consumer advisory for Enoki mushrooms that warned "consumers not to eat enoki
21 mushrooms produced by Shandong Youhe Biotechnology Co. Ltd. in Shandong
22 Province, China because of potential contamination with *Listeria* bacteria."

23 75. The Maryland Department of Health confirmed that it collected and
24 tested samples of Enoki mushrooms which demonstrated that the mushrooms were
25 produced in China and tested positive for *Listeria*.

26 76. On January 27, 2023, the FDA reported on the results of a whole genome
27 sequencing analysis of the contaminated Enoki mushroom samples collected in
28 Missouri and Maryland and determined that the two strains of *Listeria* detected on

1 the enoki mushroom products were the same strains of Listeria linked to the reported
2 illnesses in the ongoing outbreak investigation.

3
4 77. As with the sampled Enoki mushroom product found in Columbus, MO,
5 the Maryland Department of Health test samples included Enoki mushrooms from
6 China packaged in clear plastic packages with a brown and green label and includes
7 a label on the back that identifies Shandong as the producer and Sun Hong as the
8 distributor.
9

10 78. Based on the Maryland Department of Health's description of its test
11 samples of Chinese Enoki mushrooms, Sun Hong recognizes the packaging as the
12 same packaging wrongfully retained by Shandong.
13

14 79. Sun Hong continues to receive notifications from, and is continuing to
15 have to interact with, the FDA concerning the sale and distribution of Sun Hong
16 branded enoki mushrooms from China, which Sun Hong did not put into the chain of
17 commerce.
18

19 80. Sun Hong additionally continues to be required to use its resources to
20 correct the problems caused by Utopia and third parties wrongfully using Sun Hong's
21 packaging.
22

23
24 **COUNT I**
25 **Conversion as to All Defendants**

26 81. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1-80
27 of this Complaint as though restated here in full.
28

1 82. Plaintiff Sun Hong owned and had all possessory rights in the Sun Hong
2 branded enoki mushroom bags.

3
4 83. Defendants wrongfully, and without Sun Hong's knowledge or
5 permission, took possession, custody, or control of the Sun Hong's now Enoki
6 mushroom packaging identifying Sun Hong as the U.S. distributor of Enoki
7 mushrooms grown by Shandong in China.

8
9 84. Defendants knew or should have known that Sun Hong neither agreed
10 to permit nor allowed Defendants to use any Sun Hong branded enoki mushroom
11 bags for any purpose.

12
13 85. Sun Hong was harmed by Defendants use of the Sun Hong branded
14 enoki mushroom bags.

15
16 86. Due to Defendants use of the Sun Hong branded enoki mushroom bags,
17 Sun Hong has been mentioned in FDA missives identifying listeria outbreaks, Sun
18 Hong has had to respond to FDA audits and inquiry activities, suffered loss of value
19 of its brand name, has expended monies and efforts to stop the unauthorized use of
20 the Sun Hong branded bags, and suffered expenses related to the wrongful use of Sun
21 Hong branded bags which it had asked be destroyed.

22
23
24 87. Defendants conduct in using the Sun Hong branded enoki mushroom
25 bags was a substantial factor in causing Sun Hong harm.

26
27 88. Defendants actions, in knowingly using Sun Hong branded Enoki
28 mushroom bags without Sun Hong's permission or agreement, were actions

1 undertaken with malice, oppression and fraud.

2 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;

3
4 **COUNT II**

5 **Lanham Act Violation for Unfair Competition, Misbranding,**
6 **False Import, and False Advertising, 15 U.S.C. § 1125(a)**
7 **(Strict Liability- Damages) (All Defendants)**

8 89. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 179
9 of this Complaint as though restated here in full.

10 90. Defendants, in violation of the Lanham Act, used and continues to use,
11 in commerce, “false and/or misleading descriptions of fact,” which are “likely to
12 cause confusion or to cause mistake,” in “commercial advertising or promotion.
13

14 91. Specifically, the Defendants use and continue to use, Sun Hong branded
15 Enoki mushroom bag indicating that Sun Hong is selling Chinese grown enoki
16 mushrooms in the United States.
17

18 92. Sun Hong is not selling Chinese grown enoki mushrooms in the United
19 States.
20

21 93. Defendants use of Sun Hong bags which Sun Hong ordered destroyed,
22 to market Chinese grown enoki mushrooms, has caused false and misleading
23 descriptions of facts.
24

25 94. The sale in the United States of Enoki mushrooms grown in China using
26 Sun Hong branded bags is very likely to cause confusion or mistake, and has in fact
27 caused such confusion or mistake, in that Sun Hong is now the subject of
28

1 investigation by the FDA and various state health departments and Sun Hong's name
2 has been publicly identified by multiple government sources as a seller of Enoki
3 mushrooms grown in China which are subject to recall for Listeria contamination.
4 All of these events have occurred at a time after Sun Hong ceased all sales of Chinese
5 grown enoki mushrooms in the United States.
6

7
8 95. Defendants' actions directly violate the Lanham Act prohibitions
9 against wrongful use of misleading descriptions and facts as to items in commerce.

10 96. Defendants' sale of product using packaging with Sun Hong's brand
11 name on it, was false and misleading, as Sun Hong is not selling Sun Hong branded
12 Chinese grown enoki mushrooms at this time, in the United States.
13

14 97. Sun Hong is informed and believes that Defendants' deceptive action in
15 using, supplying, or selling Chinese Enoki mushrooms packaged in Sun Hong
16 branded packaging to its customers (e.g., Produce wholesalers, retailers, etc.) was
17 likely to influence purchasing decisions, and was material in influencing purchasing
18 decisions.
19

20 98. Defendants' conduct resulted in actual deception as the FDA has issued
21 multiple public health advisories regarding the Listeria outbreak involving Chinese
22 Enoki mushrooms and has repeatedly identified Sun Hong by name.
23

24 99. As further evidence that Defendants' conducted resulted in actual
25 deception, the FDA has not been able to identify, locate, or produce a single purchase
26 invoice, bill of lading, or related shipping document tracing any of the Chinese Enoki
27
28

1 mushrooms involved in the current Listeria outbreak (i.e., Nov. of 2022 – January of
2 2023) back to Sun Hong, notwithstanding the statements on the Chinses Enoki
3 mushroom packaging identifying Sun Hong as the distributor.
4

5 100. Defendants caused the wrongfully Sun Hong branded packages of Enoki
6 mushroom to be placed in the stream of commerce, with Sun Hong branded Chinese
7 Enoki mushroom packages being sold or distributed by Defendants in Missouri,
8 California, Maryland, and other states.
9

10 101. As reported by the FDA and various state departments of health, Utopia
11 widely distributed its Chinese Enoki mushrooms, packaged in Sun Hong branded
12 packaging, in the stream of commerce across the United States.
13

14 102. Defendants willfully, purposefully, and intentionally placed the
15 wrongfully packaged, misbranded goods into the stream of commerce, and continues
16 to do so.
17

18 103. Utopia has willfully, purposefully, and intentionally failed or refused to
19 remove the misbranded, falsely packaged produce from the stream of commerce.
20

21 104. Defendants' actions have caused Sun Hong significant and actual harm,
22 including but not limited to the following: 1) harm to Sun Hong's reputation, 2)
23 continuing harm to Sun Hong as the FDA continues to issue nationwide health
24 advisories naming Sun Hong as a source of the listeria contamination, 3) Sun Hong
25 has been required to expend significant funds in order to limit or mitigate damage to
26 its brand name, its costs and related matters.
27
28

1 111. Sun Hong's unregistered trademark to its name and labelling is both
2 descriptive and distinctive because it is *prima facie* distinctive of the identity of Sun
3 Hong's "goods in commerce." Stated simply, there is no other or better way for
4 consumers to recognize that a product is in fact sold by Sun Hong other than the
5 product being labeled as "Sun Hong."
6

7
8 112. Defendants and Sun Hong each target buyers with Pan-Asian centric
9 customers and sell Enoki mushrooms to those same customers as direct or indirect
10 competitors.
11

12 113. Utopia has plainly and obviously infringed on Sun Hong's protectible
13 trademark by, *inter alia*, stealing or misappropriating Sun Hong's Chinese Enoki
14 mushroom packaging, which identifies Sun Hong by name and contains its contact
15 information, and placing into the stream of commerce a product identical to that
16 which Sun Hong previously sold (i.e., Enoki mushrooms from China).
17

18 114. Defendant Utopia has willfully, purposefully, and intentionally placed
19 packaged goods that infringe upon Sun Hong's protected, unregistered trademark
20 into the stream of commerce in California and throughout the United States.
21

22 115. Defendant Utopia has willfully, purposefully, and intentionally refused
23 to remove the infringing products from the stream of commerce.
24

25 116. By selling or distributing Enoki mushrooms packaged in Sun Hong
26 branded and labeled packaging, Utopia makes false or misleading statements
27 concerning a competitor's product (here Sun Hong's product).
28

1 117. Actual deception occurred, as there is no possible way for a consumer
2 to buy an infringing Utopia product, marked as Sun Hong Chinese Enoki, with
3 knowledge that it is actually a Utopia product.
4

5 118. Utopia's trademark infringement and deception are material. Sun Hong
6 has brand-loyal customers (both re-sale customers, like grocery stores, and
7 consumers) who will certainly and obviously be confused and misled by Utopia's
8 trademark infringement.
9

10 119. Plaintiff Sun Hong was injured, because Defendants willfully, falsely,
11 and unlawfully sold and continue to sell infringing products in the interstate stream
12 of commerce causing damages to Sun Hong.
13

14 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;
15

16 **COUNT IV**
17 **Lanham Act Unfair Competition - Federal Trade Dress Infringement**
18 **15 U.S.C. §1125 and 1127**
19 **(Strict Liability- Damages) (All Defendants)**

20 120. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1-
21 119 of this Complaint as though restated here in full.
22

23 121. Defendant Utopia has willfully, purposefully, and intentionally placed
24 Produce into the stream of commerce that exactly copies, or is, Sun Hong's trade
25 dress.
26

27 122. The product Utopia is selling— Enoki mushrooms— is the same as that
28 which Sun Hong sells, and Utopia is (obviously) utilizing the same trade dress as Sun

1 Hong.

2 123. Sun Hong and Utopia are competitors in the same market for sales of
3 imported Enoki mushrooms. Both are nationwide sellers, and the relation of the
4 products (imported Enoki) are nearly identical.
5

6 124. The trade dress is identical because Utopia has either willfully stolen or
7 willfully and exactly counterfeited Sun Hong's packaging.
8

9 125. The strength or novelty of Sun Hong's trade dress, when it is copied
10 exactly, is beyond dispute. Simply stated, the trade dress clearly, obviously, and
11 strongly identifies Sun Hong as the importer and seller/distributor.
12

13 126. Utopia has willfully engaged in this behavior in bad faith, supported by
14 the facts that it will not recall its misbranded Enoki and that it has not, on information
15 and belief, notified a single purchaser that it sold misbranded Enoki illegally
16 packaged in Sun Hong packaging.
17

18 127. Utopia is a New York company, but its falsely packaged and Sun Hong-
19 branded Enoki has already been found in California, Maryland and Missouri, thereby
20 demonstrating that the Produce is involved in interstate commerce.
21

22 128. When a competing company willfully, falsely, and unlawfully sells into
23 the interstate stream of commerce Produce that steals or misappropriates the trade
24 dress of another company, the likelihood of damages is real and apparent.
25

26 129. Plaintiff Sun Hong has been damaged by Defendants actions in
27 wrongfully using Plaintiffs packaging.
28

1 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;

2 **COUNT V**

3 **PACA Violation, Unfair Conduct and Misbranding**

4 **7 U.S.C. § 499a, *et. seq.* (Damages) (All Defendants)**

5 130. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1-
6 129 of this Complaint as though restated here in full.

7
8 131. PACA governs conduct of PACA registrants, of which both Utopia and
9 Sun Hong are, and prohibits misbranding and unfair conduct.

10 132. Utopia is a “Dealer” under PACA.

11
12 133. Defendants violated the PACA requirement that PACA dealers may not
13 make “for a fraudulent purpose, any false or misleading statement in connection with
14 any transaction involving any perishable agricultural commodity which is received
15 in interstate or foreign commerce by such dealer, or bought or sold, or contracted to
16 be bought, sold, or consigned, in such commerce by such dealer...” when Defendants
17 wrongfully, fraudulently, and intentionally used Sun Hong branded bags, which Sun
18 Hong is informed and believes Utopia converted, to sell Chinese grown Enoki
19 mushrooms without notice to, permission from, or an agreement with Sun Hong.
20

21
22 134. Defendants’ false or misleading statements as alleged herein were made
23 for the fraudulent purpose of, *inter alia*, influencing customer purchasing decisions
24 in a competitive Pan-Asian marketplace, disguising the identity of the U.S.
25 distributor, avoiding or limiting the negative impacts associated with the distribution
26
27
28

1 of contaminated food products (i.e., personal injury litigation, recalls, bad press, etc.),
2 and undercutting competitor pricing by eliminating the need to pay for packaging.
3

4 135. Defendants' false or misleading statements was its sale or distribution
5 of Chinese Enoki in the United States packaged in plastic bags identifying Sun Hong
6 as the distributor, not Defendants.
7

8 136. Defendants' false or misleading statements were made on the face of the
9 product packaging used to sell and distribute fresh Enoki Mushrooms, which the
10 USDA recognizes as a covered commodity under PACA.
11

12 137. Defendants' false or misleading statements regarding its sale of Enoki
13 mushrooms from China were made in connection with interstate or foreign commerce
14 because the Enoki itself originated or was produced in China and the product
15 packaging containing the false or misleading statement was discovered in California,
16 Missouri, Maryland, and other states.
17

18 138. Defendants further violated the PACA requirement that PACA dealers
19 must not fail, without reasonable cause, to perform any specification or duty, express
20 or implied, arising out of any undertaking in connection with any Produce
21 transaction.
22

23 139. Defendants knowingly and intentionally used Sun Hong branded bags,
24 without Sun Hong's knowledge or consent.
25
26
27
28

**California False Advertising §17500
(Statutory Penalty and Restitution) (All Defendants)**

146. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1-145 of this Complaint as though restated here in full.

147. Defendants sold enoki mushrooms wrongfully branded as Sun Hong enoki mushrooms.

148. Utopia sold Chinese grown enoki mushrooms to grocery stores while aware that Sun Hong label on the bags was false.

149. Utopia, and its agent and assigns knowingly and intentionally sold mislabeled Produce, specifically mislabeling and identifying the wrong producer.

150. Plaintiffs are informed and believe that Utopia knowingly and intentionally sold mislabeled Produce, specifically mislabeling and identifying the wrong producer to the citizens of California, in order to mislead Californians into believing that Sun Hong was the distributor of the Chinese grown Enoki mushrooms.

151. Defendants knew or should have known that the Chinese grown Enoki mushrooms have a significant risk of being contaminated with the Listeria virus.

152. Defendants use of Sun Hong packaging misled California citizens into believing that Sun Hong was distributing the Chinese grown Enoki mushrooms, and therefore, when Sun Hong's name was listed in FDA announcements concerning Chinese grown Enoki mushrooms contaminated with the listeria virus, caused harm to Plaintiff.

1 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;

2 **COUNT VII**

3 **Unfair Business Practices- Business and Professions Code § 17200**
4 **(Statutory Penalty and Restitution) (All Defendants)**

5 153. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1-
6 152 of this Complaint as though restated here in full.

7
8 154. Defendants' actions in selling Chinese grown enoki mushrooms using
9 Sun Hong branded bags, without Sun Hong's permission is an unlawful, and
10 fraudulent activity, under California's laws of conversion, under the tenets of the
11 Perishable Agricultural Commodities Act, and under the Lanham Act, among other
12 statutes.
13

14
15 155. Defendants' actions in selling Chinese grown enoki mushrooms using
16 packaging which Sun Hong thought was destroyed is and was likely to mislead
17 consumers as to the source, and distributor of the enoki mushrooms.
18

19 156. Defendants wrongful use of Sun Hong's packaging violates several
20 laws, specifically and not limited to the Perishable Agricultural Commodities Act,
21 and the Lanham Act, both of which specifically prohibit the use of someone else's
22 trade information, as a wrongful, unfair business practice.
23

24 157. Plaintiff was harmed by Defendants unfair business practices in using
25 Sun Hong's packaging without Sun Hong's permission or knowledge.
26

27 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;
28

COUNT VIII

**Commercial Disparagement, Trade Libel, Slander of Goods
(Damages) (All Defendants)**

158. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1-157 of this Complaint as though restated here in full.

159. Defendants made specific statements that Sun Hong was the distributor of Chinese grown enoki mushrooms by selling Chinese grown enoki mushrooms using Sun Hong branded packaging to third parties across the nation.

160. Plaintiffs are informed and believe that Defendants were aware that there is a significant risk of Listeria in both Chinese grown Enoki mushrooms and Enoki mushrooms in general.

161. Defendants, as nationwide sellers and distributors of fresh Enoki mushrooms, should have known and been aware that there is a significant risk of Listeria in both Chinese grown Enoki mushrooms and Enoki mushrooms in general.

162. Plaintiffs are informed and believe that Defendants intentionally sold Chinese grown enoki mushrooms using Sun Hong packaging with the intent and knowledge that doing so was likely to cause harm to Sun Hong, because of the high likelihood of listeria in Chinese grown enoki mushrooms.

163. Plaintiffs are informed and believe that Defendants intentionally used Sun Hong packaging, that Defendants knew that they had no right to use Sun Hong packaging, that Defendants knew that Sun Hong had not grown, distributed or

1 intended to distribute Chinese grown enoki mushrooms because of the risk of
2 Listeria, and that Defendants acted, in using the Sun Hong packaging identifying the
3 Chinese grown enoki mushrooms as Sun Hong product, with reckless disregard for
4 the truth of such identification.
5

6 164. Defendants distributed the Chinese grown enoki mushrooms using Sun
7 Hong branded packaging to third parties, specifically, to grocers and the public in
8 Missouri, Maryland, and California, as well as to other third parties.
9

10 165. Defendants knew, or should have known, that third parties, including
11 consumers, would act in reliance on the identification of the packaging as Sun Hong
12 produce, and that such action would cause Plaintiff financial harm and loss.
13

14 166. Defendants' actions in using Sun Hong packaging was a substantial
15 factor in causing Plaintiff's harm and loss of economic benefit and good name.
16

17 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;
18

19 **COUNT IX**

20 **Negligence/Negligence Per Se Statutory Failure to Abide**
21 **(Damages, Referral, and Injunctive Relief) (All Defendants)**

22 167. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1-
23 166 of this Complaint as though restated here in full.

24 168. Defendants failed to exercise due care in the sale of Chinese grown
25 enoki mushrooms when they used Sun Hong branded bags without Sun Hong's
26 permission or agreement.
27
28

1 169. Defendant Utopia violated its duties of care created, established, or
2 identified in: (i) the FDCA, 21 U.S.C. § 301, *et. seq.*; (ii) PACA, 7 U.S.C. 499(b)(4)
3 & (5); (iii) the Lanham Act, 15 U.S.C. § 1125, *et. seq.*; (iv) California's Unfair Trade
4 Practices Act, Cal. Bus. & Prof. Code § 17200, *et. seq.*; (v) California's Statutory
5 Prohibition on False Advertising, Cal. Bus. & Prof. Code § 17500, *et. seq.*, and (vi)
6 California's Sherman Law, Cal. Health & Saf. Code, § 110100, *et. seq.*

9 170. The Federal Food, Drug, and Cosmetic Act ("*FDCA*") (21 U.S.C. § 301,
10 *et. seq.*) places a duty on Utopia, as an importer, seller, and distributor of a food
11 product, *inter alia* to (i) Label food such that the labeling is
12 accurate in all particulars, 21 U.S.C. § 343(a); (ii) Not offer for sale food under
13 "another name," 21 U.S.C. § 343(b); (iii) Not imitate another food, 21 U.S.C. §
14 343(c); and (iv) Provide the truthful and accurate name and place of business of the
15 manufacturer, packer, or distributor, 21 U.S.C. § 343(e).

18 171. Utopia has violated its duty under the FDCA by selling into the stream
19 of interstate commerce Enoki mushrooms falsely labeled as Sun Hong mushrooms.

21 172. The Lanham Act § 1125(a) places a duty of Defendant Utopia that it
22 shall only sell Produce into interstate commerce that does not include false
23 designations of origin and false descriptions, and which is not misbranded. The
24 Lanham Act § 1125 and 1127 both place a duty on Utopia to not improperly use
25 without permission the trademark or trade dress of another.

28 173. Utopia has violated its duty under the Lanham Act by selling into the

1 stream of interstate commerce Enoki mushrooms falsely labeled as Sun Hong
2 mushrooms, by using false descriptions and origin, and by infringing on Sun Hong's
3 trademark and trade dress.
4

5 174. The Sherman Food, Drug, and Cosmetic Law (the "*Sherman Law*")
6 (California Health & Saf. Code, § 109875, *et. seq.*) broadly prohibits the misbranding
7 of food, which is defined as labeling that is false or misleading in any particular. The
8 Sherman Law incorporates all food labeling regulations and any amendments to those
9 regulations adopted pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
10 § 301 et seq.) as the food labeling regulations of California (Health & Saf. Code, §
11 110100, subd. (a)).
12
13

14 175. Specifically, The Sherman Law places a duty on Utopia to: (i) not forge,
15 counterfeit, simulate, falsely represent, or without proper authority use, any mark,
16 stamp, tag, label, or other identification device that is authorized or required by
17 regulations adopted pursuant to this part or the federal act, § 110300; (ii) not place,
18 or cause to be placed upon any food, drug, device, or cosmetic, or its package, the
19 trade name or other identifying mark or imprint of another person or any likeness of
20 the trade name or other identifying mark or imprint of another person, § 110315; (iii)
21 not sell, dispense, dispose of, hold, or conceal any food, drug, device, or cosmetic or
22 its package, with knowledge that the trade name or other identifying marks, imprint,
23 or likeness of the trade name or other identifying mark or imprint of another person
24 has been placed on the food, drug, device, or cosmetic or its package, § 110320; and
25
26
27
28

1 (iv) not do any act that causes any food, drug, device, or cosmetic to be a counterfeit,
2 or to sell, dispense, or hold for sale or dispensing, the counterfeit food, drug, device,
3 or cosmetic, § 110330.

4
5 176. Utopia has violated its duties under the Sherman Law provisions § §
6 110300, § 110315, § 110320, 110330, by willfully and intentionally mislabeling and
7 misidentifying its Enoki, and by forging, counterfeiting, simulating, falsely
8 representing, and/or without proper authority using Sun Hong's brand, label, and
9 packaging.

10
11
12 177. Utopia has violated its duties under the Sherman Law by, with an intent
13 to deceive, stealing and/or counterfeiting Sun Hong's trade name, trade dress,
14 packaging, and label.

15
16 178. Utopia has violated its duties under the Sherman Law by, with an intent
17 to deceive and without permission, using Sun Hong's trade name, trade dress,
18 packaging, and label, and selling Produce in California that Utopia knew or should
19 have known was improperly labeled, packaged, and branded.

20
21 179. California's Statutory Prohibition on False Advertising (Cal. Bus. &
22 Prof. Code § 17500, *et. seq.*) places a duty on Utopia to not sell Produce bearing any
23 "advertising device" that makes any "untrue or misleading" statement.

24
25 180. Utopia has violated Cal. Bus. & Prof. Code § 17500 *et seq.* by selling
26 into the stream of interstate commerce Enoki mushrooms falsely labeled, branded,
27 and packaged as Sun Hong mushrooms.

1 181. The California Unfair Competition Law, Cal. Bus. & Prof. Code §
2 17200 *et seq.*, places a duty on Defendant Utopia to not commit unfair business
3 practices, including the violation of applicable federal and state statutes. Cal. Bus.
4 & Prof. Code §§ 17200 and 17203.

6 182. Utopia has violated Cal. Bus. & Prof. Code § 17200 *et seq.* by selling
7 into the stream of interstate commerce Enoki mushrooms falsely labeled, branded,
8 and packaged as Sun Hong mushrooms, and by utilizing a trade dress identical to Sun
9 Hong's trade dress.

11 183. Defendants' actions in using the Sun Hong packaging without Sun
12 Hong's knowledge or agreement violated the Lanham Act prohibition against
13 wrongful use of trade dress, the Perishable Agricultural Commodities Act prohibition
14 against false identification of goods, the Food Drug and Cosmetic Act prohibition
15 against misbranding and false labeling, and multiple other statutes.

17 184. These statutes each create a duty of care that Utopia must abide by.

18 185. Utopia knew or should have known that its use of Sun Hong-branded
19 packaging would violate each of these laws, confuse consumers and customers, and
20 harm Sun Hong.

21 186. Utopia knew or should have known that its use of Sun Hong-branded
22 packaging would cause injury to Sun Hong and to customers and consumers
23 throughout California and the United States.

24 187. Sun Hong suffered and continues to suffer damages from Defendants

1 negligence.

2 188. Sun Hong is therefore entitled to damages pursuant to Defendants'
3 negligence per se under its statutory duty to abide.
4

5 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;

6
7 **COUNT X**
8 **Intentional Interference with Prospective Economic Advantage**
9 **(All Defendants)**

10 189. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1--
11 188 of this Complaint as though restated here in full.

12 190. Sun Hong and multiple distributors and other buyers of fresh Produce,
13 including Enoki mushrooms, were in an economic relationship which likely would
14 result in economic benefit or a continued economic benefit to Sun Hong.
15

16 191. As competitors in the various Pan-Asian markets for Enoki mushrooms
17 across the country, Defendants knew, or should have known, of the relationship
18 between Sun Hong and its distributors and other buyers of Produce, including Enoki
19 mushrooms.
20

21 192. Defendants used Sun Hong packaging, without Sun Hong's permission
22 or knowledge, to distribute Chinese grown enoki mushrooms, with risk of Listeria
23 contamination.
24

25 193. Defendants knew or should have known that by wrongfully using Sun
26 Hong's packaging without Sun Hong's permission or knowledge that they would
27 disrupt Sun Hong's relationship with its distributors and other buyers of Produce,
28

1 including Enoki mushrooms.

2 194. In fact, due to Defendants wrongful use of Sun Hong's packaging, Sun
3 Hong has been identified by the FDA in more than one recall or health warning
4 involving Enoki mushrooms, due to risk of Listeria contamination or actual Listeria
5 contamination.
6

7
8 195. The FDA's national health warnings and press releases identifying Sun
9 Hong, along with continued FDA investigation and audit of its operations, has
10 disrupted Sun Hong's business relationships with its buyers and distributors of Sun
11 Hong Produce.
12

13 196. Sun Hong suffered losses and harm due to Defendants actions, and
14 continues to suffer loss and harm.
15

16 197. Defendants conduct, in wrongfully using Sun Hong packaging without
17 Sun Hong's knowledge or permission, was a substantial harm in causing Sun Hong
18 damage and loss.
19

20 198. Defendants conduct was intentional, and Defendants actions, in
21 knowingly using Sun Hong branded Enoki mushroom bags without Sun Hong's
22 permission or agreement, were actions undertaken with malice, oppression, and
23 fraud.
24

25 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;
26

27 **COUNT XI**

28 **Negligent Interference with Prospective Economic Advantage**

All Defendants

1 199. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1-
2 198 of this Complaint as though restated here in full.

3
4 200. Sun Hong and multiple distributors and buyers of fresh Produce,
5 including Enoki mushrooms, were in an economic relationship which likely would
6 result in economic benefit to Sun Hong.

7
8 201. Defendants knew, or should have known, of the relationship between
9 Sun Hong and the distributors and buyers of fresh Produce, including Enoki
10 mushrooms.

11
12 202. Defendants used Sun Hong packaging, without Sun Hong's permission
13 or knowledge to distribute Chinese grown Enoki mushrooms, with risk of Listeria
14 contamination.

15
16 203. Defendants knew or should have known that by wrongfully using Sun
17 Hong's packaging without Sun Hong's permission or knowledge that they would
18 disrupt Sun Hong's relationship with distributors and buyers of fresh Produce,
19 including Enoki mushrooms.

20
21 204. In fact, due to Defendants wrongful use of Sun Hong's packaging, Sun
22 Hong has been identified by the FDA in more than one recall or public health
23 advisory/warning involving Enoki mushrooms produced in China, due to risk of
24 Listeria contamination.

25
26 205. The public health advisory/warnings involving Enoki Mushrooms from
27 China, along with the FDA's related investigation and audit of Sun Hong, has
28

1 disrupted Sun Hong's relationships with sellers, buyers, and distributors of Sun Hong
2 Produce.

3
4 206. Sun Hong suffered loss, and harm due to Defendants actions.

5 207. Defendants conduct, in wrongfully using Sun Hong packaging without
6 Sun Hong's knowledge or permission was a substantial harm in causing Sun Hong
7 damage and loss.
8

9 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;

10
11 **COUNT XII**
Injunctive Relief
12 **(All Defendants)**

13 208. Plaintiff Sun Hong re-alleges, adopts, and incorporates Paragraphs 1--
14 207 of this Complaint as though restated here in full.
15

16 209. The Federal Food, Drug, and Cosmetic Act ("*FDCA*") (21 U.S.C. § 301,
17 *et. seq.*), the Perishable Agricultural Commodities Act ("*PACA*") (7 U.S.C. 499(b)(4)
18 & (5)), the Lanham Act (15 U.S.C. § 1125, *et. seq.*), California's Unfair Trade
19 Practices Act (Cal. Bus. & Prof. Code § 17200, *et. seq.*), California's Statutory
20 Prohibition on False Advertising (Cal. Bus. & Prof. Code § 17500, *et. seq.*), and
21 California's Sherman Law (Cal. Health & Saf. Code, § 110100, *et. seq.*) all provide
22 for injunctive relief to stop inappropriate activities under the individual statutes.
23
24

25 210. Defendants have violated the various requirements against fraudulent
26 labeling, false use of name and related prohibitions identified in each of the statutes
27 identified above, by selling Chinese sourced Enoki mushrooms using Sun Hong's
28

1 packaging without Sun Hong's knowledge or permission.

2 211. Defendants wrongful use of Sun Hong's packaging, and continuing
3 wrongful use of Sun Hong's packaging, has harmed, and continues to harm, Sun
4 Hong, subjecting Sun Hong to FDA activities, putting Sun Hong's name out in
5 nationwide public health advisories and warnings regarding Chinese grown Enoki
6 mushrooms due to Listeria contamination and related matters.
7

8
9 212. Defendants' actions are causing Sun Hong immediate and irreparable
10 harm, which can only be remedied by equitable action on the part of this Court.
11

12 WHEREFORE, Plaintiffs pray for damages as set forth in the prayer below;

13 **PRAYER**

14 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
15 them, as follows:
16

17 1. As to Counts 1, 2, 3, 4, 5, 8, 9, 10, and 11 – For damages in a sum
18 according to proof, including sums paid for loss of profits, and damages;
19

20 2. As to Counts 6 and 7, fines for each violation and occurrence in the
21 amount set by statute and as determined by the Court;
22

23 3. As to Counts, 2, 3, 4, 5, 8, and 12, for declaratory relief, including
24 injunction, and or whatever equitable relief is necessary, appropriate as determined
25 by the Court;
26

27 4. As to Counts 1, 8, 9, 10, and 11, for punitive damages in a sum according
28 to proof;

- 1 5. As to Counts 2, 3, 4, and 5, treble damages in a sum according to proof;
- 2 6. For costs incurred herein;
- 3 7. For attorney's fees as provided for by statute, in a sum according to
- 4 proof; and
- 5 8. For such other and further relief as the Court deems proper and
- 6 appropriate.
- 7
- 8
- 9

10 Dated: January 27, 2023

Respectfully submitted,

11 KLINOWSKI DAMIANO

DIEMER & WEI, LLP

12 By: Jason R. Klinowski, Esq.
13 Jason R. Klinowski, Esq.
14 *(Pro Hac Vice Forthcoming)*

By: Kathryn S. Diemer, Esq.
Kathryn S. Diemer, Esq.